

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MAKER STUDIOS, INC.)
13428 Maxella Ave. #525)
Marina del Rey, CA 90292)
)
and)
)
RAY WILLIAM JOHNSON)
1517 S. Bentley Ave Apt# 303)
Los Angeles, CA 90025)
)
)
Plaintiffs,)
v.)
)
CHRIS SHIVERS)
3711 W 171 PL)
Country Club Hills, IL 60478)
)
)
Defendant.)
)

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND JURY
DEMAND**

Now comes Plaintiff Maker Studios, Inc. (“Maker”) and Plaintiff Ray William Johnson (“Johnson”) (collectively referred to as “Plaintiffs”), for their Complaint against Defendant, Chris Shivers (“Defendant”), hereby state as follows:

PARTIES

1. Plaintiff Maker Studios, Inc. is a California corporation with its principal office in Marina del Rey, California that transacts business in the state of Ohio.
2. Plaintiff Ray William Johnson is an individual residing in California, at an address of 1517 S. Bentley Ave, Apt #303, Los Angeles, CA 90025.

3. Upon information and belief, Chris Shivers is an individual residing in Illinois at an address of 3711 W 171 Pl, Country Club Hills, Illinois, 60478.

JURISDICTION AND VENUE

4. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101 et seq., and related claims under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Jurisdiction of this Court is conferred by 28 U.S.C. §§ 1331 and under the Digital Millennium Copyright Act under 17 U.S.C. § 512(g)(3)(D).

5. Venue is proper in this district under 28 U.S.C. §1391.

FACTS APPLICABLE TO ALL COUNTS

6. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-5 of the Complaint as if fully rewritten herein.

7. YouTube is the leader in online video, and is a popular destination to watch and share original videos worldwide via the Internet. YouTube allows people to upload and share video clips on www.youtube.com.

8. Maker is, and at all times relevant to the matters alleged in this Complaint was, engaged in the business of partnering, promoting, developing, creating, and marketing independent content creators.

9. Johnson is, and at all times relevant to the matters alleged in this Complaint was, engaged in the business of producing comedic audio/visual works including parody videos and music videos for comedic songs. These works are regularly uploaded, published and disseminated to the public on YouTube under the account names “YourFavoriteMartian” and “RayWilliamJohnson.”

10. Upon information and belief, Defendant is the owner of the YouTube account named “6minutetutorials.”

11. On February 23, 2011, Plaintiffs uploaded a video onto YouTube under the account “YourFavoriteMartian” entitled “Bottles of Beer” and located at the domain name <http://www.youtube.com/watch?v=HIgJ0MYSjv8> (the “Work”). The Work consists of an original comedic musical work set to a cartoon storyline created by Johnson.

12. On August 26, 2011, Plaintiffs applied to the U.S. Copyright Office for an Expedited Certificate of Registration for the Work. A true and correct copy of the application is attached hereto as Exhibit A.

13. Plaintiffs are currently the joint owners of all right, title and interest in and to the copyright in the Work. Plaintiffs have expended substantial sums of money and effort to create and market the Work.

14. In early February 2011, Defendant uploaded a video onto YouTube under the account “hjalteyhjalte55555” entitled “yourfavoritemartian bottles of beer” and located at the domain name <http://www.youtube.com/watch?v=r-KfzpgVpW4> (the “Infringing Work”).

15. The Infringing Work is a near identical copy of the Work.

16. On February 23, 2011, Plaintiffs filed an infringement notice with YouTube. The infringing video was removed by YouTube shortly thereafter.

17. On August 17, 2011, Plaintiffs received notification from YouTube that Defendant had filed a counter-notice in response to Plaintiff’s infringement notice. In the attachment to this notice, Defendant states: “I swear under penalty of perjury, that I have a good faith belief the material was removed due to a mistake or misidentification of the material to be removed or disabled.”

18. As a result, YouTube informed Plaintiffs on August 17, 2011, that absent notification within 10 days that Plaintiffs have filed an action seeking a court order to restrain the allegedly infringing activity, the material would be reinstated on the “6minutetutorials” account.

19. YouTube requires that users who upload videos own or have the right to the videos.

20. Defendant willfully copied the Work and uploaded the Infringing Work to YouTube without permission or authorization from Plaintiffs and with full knowledge of Plaintiffs’ ownership and exclusive rights to the Work.

21. Upon information and belief, Plaintiffs have and will continue to sustain damage as a result of Defendant’s wrongful conduct in uploading the Infringing Work to YouTube.

22. Unless enjoined by this Court, Defendant will continue its course of conduct to wrongfully use, infringe upon, display, distribute and otherwise exploit Plaintiffs’ copyrighted Work. As a direct and proximate result of the acts of the Defendant alleged above, Plaintiffs have already suffered irreparable harm. Plaintiffs have no adequate remedy at law to redress all of the injuries that Defendant has caused and intends to cause by its conduct. Plaintiffs will continue to suffer irreparable harm until Defendant’s actions alleged above are enjoined by this Court.

COUNT I
COPYRIGHT INFRINGEMENT (17 U.S.C. §§ 101 et seq)

23. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-22 of the Complaint as if fully rewritten herein.

24. The Work is an original work of authorship and Plaintiffs are the exclusive owners of all right, title and interest in and to the copyright in the Work.

25. Defendant has not received any license or copyright to the Work.

26. Defendant's unauthorized posting of the Work to YouTube was committed willfully and in knowing disregard for Plaintiffs' rights.

27. Plaintiffs have been damaged by Defendant's infringing activities and have been and will continue to be irreparably injured unless such activities are enjoined preliminarily and permanently by this Court.

COUNT II
UNFAIR COMPETITION

28. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-27 of the Complaint as if fully rewritten herein.

29. Defendant's use and distribution of the Work is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiffs.

30. Defendant's actions constitute unfair competition in violation of the Lanham Act § 43(a), 15 U.S.C. 1125(a).

31. Plaintiffs have been and will continue to be irreparably harmed by such infringement and, therefore, have no adequate remedy at law.

COUNT III
VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT (17 U.S.C. § 512(f))

32. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-31 of the Complaint as if fully rewritten herein.

33. In the counternotice submitted by Defendant on August 17, 2011, Defendant made knowing material misrepresentations that the Infringing Work was removed from YouTube due to mistake or misidentification and that the Infringing Work thus did not infringe Plaintiffs rights, as described more fully above.

34. As a proximate result of Defendant's conduct, Plaintiffs have suffered injury and have been damaged in an amount subject to proof at trial to include actual damages, including costs and attorney's fees, incurred by Plaintiffs as permitted under 17 U.S.C. § 512(f).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Maker Studios, Inc. and Ray William Johnson respectfully request that judgment be granted in their favor with respect to all of the causes of action set forth above and that relief be granted as follows:

- A. That Defendant be preliminarily and permanently enjoined from using, distributing, reproducing, uploading to YouTube and/or other website, displaying or otherwise exploiting the Work;
- B. An award of Plaintiffs costs and attorneys fees under 17 U.S.C. § 512(f); and
- C. Such other relief as this Court deems appropriate and just.

*Plaintiffs Maker Studios, Inc. and
Ray William Johnson*

Dated: August 26, 2011

By: /s/ Sarah R. Wolff
One of their Attorneys
Sarah R. Wolff (ARDC No. 3123733)
Thomas M. Levinson (ARDC No. 6286713)
REED SMITH LLP
10 South Wacker Drive
Chicago, IL 60606
(312) 207-1000

JURY DEMAND

Plaintiffs hereby demands trial by jury on all issues so triable.

By: */s/ Sarah R. Wolff*
Sarah R. Wolff

EXHIBIT A

-APPLICATION-

Title _____

Title of Work: Bottles of Beer

Completion/Publication _____

Year of Completion: 2011

Date of 1st Publication: February 23, 2011

Nation of 1st Publication: United States

Author _____

■ **Author:** Ray William Johnson

Author Created: entire motion picture, production/producer, direction/director, script/screenplay, editing/editor

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Copyright claimant _____

Copyright Claimant: Ray William Johnson

1517 S. Bentley Ave., Apt. 303, Los Angeles, CA, 90025, United States

Copyright Claimant: Maker Studios

13347 Washington Boulevard, Culver City, CA, 90066, United States

Transfer Statement: By written agreement

Certification _____

Name: April L Besl

Date: August 26, 2011

Applicant's Tracking Number: 69597-1

Registration #:

Service Request #: 1-653243631

Priority: Special Handling

Application Date: August 26, 2011 11:28:02 AM

Correspondent

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Mail Certificate

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